

SHARECK MASHAVIRA

Versus

THE STATE

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO 30 SEPTEMBER, 2020

Criminal – Referral for sentence

B. E Mathose, for the state
Accused, in person

MAWADZE J: The accused was brought before this court in terms of section 225 (b) (i) of the Criminal Procedure and Evidence Act [cap 9:07] for purposes of sentence on the instruction of the Prosecutor General. The trial Magistrate had no jurisdiction to impose the minimum mandatory sentence relevant in the matter.

The accused has been in custody since his arrest on 10 December 2019 and the record of proceedings was sent to me in terms of section of section 226 (c) (i) and (ii) of the Criminal Procedure and Evidence Act [cap 9:07].

I duly proceeded to instruct the Registrar in terms of section 227 (i) of the Criminal Procedure and Evidence Act [cap 9:07] to set the matter down for sentence.

After going through the record of proceedings. I am satisfied that the accused was properly convicted.

The accused was convicted of contravening section 60 A (3) (a) of the Electricity Act

[Cap 13:19] which relates to unlawful tempering with any apparatus used for generating, transmitting, distribution or supplying of electricity causing disruption of supplying of so such electricity or cutting off such supply of electricity.

After a trial the following facts were proved:

On 10 December 2019 at about midnight the accused proceeded to stand No. 10125 mineral road, Industrial site, Masvingo armed with a pair of pliers. The accused proceeded to cut 4 by 3 meters of 16 mm armoured copper cables belonging to ZESA. He took them to his residence in Mucheke, Masvingo. The police acting on a tip off proceeded to the accused's residence. The accused was found in the act peeling the armoured copper cables with a knife and was arrested. The copper cables which are now said to be of no commercial value to ZESA are valued at \$1035.

While the accused protested his innocence throughout the trial, the evidence against him is simply overwhelming. The accused's conviction can not therefore be impugned. It is accordingly confirmed.

The 18-year-old accused is a first offender. In mitigation he said at he is of no fixed abode and is of no means. The accused said he stole the armoured copper cables in order to sell them for his own benefit.

The penalty provision for contravening section 60 A (3) (a) of the Electricity Act

[cap 13:19] in the absence of special circumstances is a prison term of not less than 10 years. However if there are special circumstances the penalty is a fine not exceeding level 14 (\$30 000) or a prison term not exceeding 10 years or both. The special circumstances required in this instance are peculiar to the commission of the offence and not the offender.

I proceeded to inquire into special circumstances from the accused as to why he committed this offence. From his response I did not find special circumstances at all. The accused simply stole the armoured copper cables for commercial gain.

Due to the accused's selfish conduct the Industrial area in Masvingo was plunged into darkness. The business people operating in that area were greatly inconvenienced and prejudiced. For ZESA they now have to fork money from tax payers to replace the stolen armoured copper cables. I also take judicial notice of the complaints raised by ZESA that the offences of this nature are very prevalent.

In the absence of any special circumstances peculiar to the commission of the offence my hands are tied. I am enjoined to impose the minimum mandatory 10-year prison term despite the accused's youthfulness.

In the result I make the following order.

It is ordered that,

1. The conviction of the accused be and is hereby confirmed.
2. The accused is sentenced to 10 years imprisonment and the armoured copper cables are to be surrendered to Zesa.